



STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAVERHILL COOPERATIVE EDUCATION ASSOCIATION, Affiliated with NEA/NH	:	
	:	
Complainant	:	
	:	CASE NO. T-0232:3
v.	:	
	:	DECISION NO. 81-35
HAVERHILL COOPERATIVE SCHOOL BOARD	:	
	:	
Respondent	:	
	:	

APPEARANCES

Representing the Complainant, Haverhill Cooperative Education Association:

John Fessenden, UniServ Director, NEA/NH
Mel Myler, Director, NEA/NH
William J. Shanahan, President, NEA/NH
Barbara Uresky, President, HCEA

Representing the Respondent, Haverhill Cooperative School Board:

Stephen U. Samaha, Esquire, Counsel
Norman H. Mullen, Superintendent
Charles E. Meyers, Principal
Monica Smith, Teacher
Robert Hatch, Teacher

BACKGROUND

On April 28, 1981, the Haverhill Cooperative Education Association, Affiliated with NEA/NH filed improper practice charges against the Haverhill Cooperative School Board for allegedly violating the rights of the bargaining agent by denying the Association and its representative reasonable access and time to discuss problems with members by adopting a policy at a Board meeting on March 7, 1977 which stated:

"No union or association representative shall be permitted on school property during working hours. The term working hours shall be from 8:00 a.m. to 3:20 p.m. This policy is effective immediately."

The policy was restated by letter from the Superintendent to the Association representative on April 2, 1981, as follows:

"Please be advised that the policy prohibiting union or association activity during the school day by any agent or agents, will be strictly adhered to by all principals.

Union representatives may be in the school prior to its opening and at the conclusion in the p.m.

Principals will follow the same procedure with this policy as they would if a person were disturbing school.

If you have any questions concerning the policy, please feel free to contact this office."

The Association also alleged that the School Board favored a non-member of the Association by allowing her to file an illegal grievance and then found in her favor; the grievance form used was not a part of the contract.

The Association sought as remedies, (a) finding of unfair labor practices against the School Board for failing to allow the representative to visit members when not engaged in teaching and for using a grievance procedure which encouraged non-members to file against the Association or their representative; (b) an order to the School Board to allow representatives of the Association to visit their constituency during the school day providing classes were not interrupted.

The School Board thru its Counsel and Superintendent replied by letter, 5/11/81, stating that the policy adopted by the Board was not illegal and that its adoption was to insure that the educational process would not be interrupted and was not intended to deny Mr. Fessenden or other NHEA representatives "reasonable visitation rights".

They further stated that "In fact, the policy was not strictly enforced so long as there was no serious disruption of the operation of the schools during working hours. The fact that Mr. Fessenden did visit schools during noon hours and dropped off materials at other times did not mean that the Board did not intend to enforce its 3/9/77 policy. The Board tried to allow Mr. Fessenden some flexibility, especially during the period when contracts were being negotiated."

In addition, stated that "The complaint filed by Monica M. Smith on 3/25/81, who happened not to be a member of NHEA, was not a grievance. It was simply a matter of convenience to use a document entitled 'Grievance Form' to record the complaint. Because of this written complaint the Board felt that the leeway allowed under the practical enforcement of its 3/9/77 regulation had been abused and that the educational process was being disrupted and interfered with. It was purely coincidental that the written complaint was made after the annual School District meeting. Had there been no written complaint made, it is quite possible that the Board would have continued to have allowed the prior flexibility referred to above. The Board feels that its policy, even if strictly enforced, is reasonable and does not impinge upon the Association's 'reasonable visitation rights'."

Hearing on the charges was held on June 11, 1981 in the PELRB office in Concord at which time the issues to be heard were summarized as follows:

1. Denial on the part of the School Board of reasonable access to Association members by the Association representative.
2. Interference with administration of the Association.
3. Use of illegal grievance form.

At the hearing Counsel for the School Board agreed that it had published a letter on April 2, 1981 from the Superintendent to Mr. Fessenden denying him access to Union members.

William Shanahan, President of NEA/New Hampshire testified that approximately a year ago he had visited Haverhill Academy between 7:00 a.m. and 8:05 a.m. after introducing himself to the principal at 7:15 a.m. The principal then introduced him to the teachers and welcomed him without complaint. He added that he had visited approximately 50 schools and had never been denied access to any school during the school day.

John Fessenden testified that the non-visitation policy was adopted in 1977 when there was strong disagreement about the Association and the School Board; that he had discussed the policy with Superintendent Mullen who had been very reasonable and flexible about the policy, and that he had visited other buildings in the District approximately 150 times, before school, after school and during lunch periods and had never disrupted any classes. He had always stopped at the principals' office to inform him of the reason for his visits. He further stated that the Association had been active at the annual school district meeting with respect to appropriations for the district and that it was after that meeting that he received the letter from Superintendent Mullen directing all principals to strictly enforce the policy on visitation rights.

Attorney for the School Board, Attorney Samaha, cited RSA 193:11 dealing with disruption of schools and cited several cases where the subject had been discussed at length and certain visitations denied.

Superintendent Mullen testified that perhaps the activity at the annual meeting had something to do with the new attempt for strict enforcement of the visitation policy and that he felt union activities could be done after school and he had always given free access to the school and no one had ever reported to him that Mr. Fessenden ever interrupted classes but that there was some animosity between a non-union teacher and Mr. Fessenden.

Monica Smith, math and science teacher in the Haverhill Cooperative School District for eight years, testified that she was opposed to joining the Association and was opposed to unions in general and that she had spoken to the principal three or four times complaining about Mr. Fessenden's presence in the building.

Mr. Meyers, Principal, testified that Mr. Fessenden's presence could be disruptive but that there had been no interruption as far as he was aware. One teacher had spoken to him of Fessenden's presence in February or March but not in the form of a complaint.

Fessenden, in summation, stated that the policy adopted in 1977, now being enforced in 1981, was because of a complaint of one person in one school and that he was not asking to meet with teachers when teaching where he had previously been permitted access.

In summation for the School Board, Attorney Samaha stated he believed the School Board was within its right to adopt and enforce the policy initiated and he would attempt to resolve the issue between the Board Members and Mr. Fessenden.

FINDING OF FACTS

-- The Haverhill Cooperative Education Association, NEA/NH is the exclusive representation of the teachers in the Haverhill Cooperative School District having been certified by PELRB on October 15, 1976 in accordance with RSA 273-A:10.

-- The representatives of NEA/NH had been permitted access to the various schools in the District on pretty much of an open basis and without challenge even though a strict policy had been adopted with reference to visitation by Association representatives between 1977 and 1981.

-- A satisfactory working relationship with respect to visitations had been in effect between the Superintendent, School Board and the Haverhill Cooperative Education Association for the past four years.

-- It was not until one teacher, who testified of her opposition to unions in general, made her complaint known to the principal that a change in enforcement of the policy was made. The School Board admitted in its answers that the policy was not strictly enforced as long as there was no disruption of the school's operation during school hours.

-- The filing of a purported grievance by a non Association member on a form different than that presented by the duly certified representative of all teachers is a violation of established procedures.

-- There were no specific instances offered where the Association's representative had disrupted the normal school schedule or had visited individuals while engaged in teaching.

--RSA 273-A:11(b) confers certain rights upon duly certified representatives, "the right to represent the bargaining unit exclusively and without challenge during the term of the collective bargaining agreement".

DECISION AND ORDER

After considering all the testimony and evidence presented at hearing and the relief sought, the Board issues the following decision and order:

1. The Haverhill Cooperative School Board is guilty of unfair labor practices for failing to allow the Association's representative to visit members when they are not actually engaged in teaching and for using a grievance procedure which encourages non-members to file against the Association or its representatives; this is an illegal process.
2. The Haverhill Cooperative School District is hereby ordered to allow the representative for the Association the right to visit members during the school day providing it does not disrupt classes.



EDWARD J. HASELTINE, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 16th day of September, 1981.

By unanimous vote, Chairman Haseltine presiding, members Osmond and Anderson present and voting. Also present, Executive Director LeBrun.